INDEX

CITATIONS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.....

WILLIAM C. LINN,
Petitioner,

vs.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, a Labor Association, LEO J. DOYLE, BENTON I. BILBREY, and W. T. ENGLAND,
Jointly and Severally,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

William C. Linn. petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on October 13, 1964.[1]

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the District Court is unreported; it is contained in the Record at page 38a thereof, and is printed in Appendix B hereto at pages 23-26. The opinion of the Circuit Court of Appeals, is reported at 337 F. 2d 68, and is printed in Appendix B at pages 16-22.

JURISDICTION

The judgment of the Circuit Court of Appeals, affirming the judgment of the District Court, was entered on October 13, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTION PRESENTED

Has Congress so clearly pre-empted the field of labor-management relations and declared it to be in the National Interest that an individual, who becomes the unfortunate victim of a malicious and vicious libel occurring during the course of a labor relations incident has now completely lost his only effective and historical right of recourse for this most damaging injury to his person?

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[1] Leo J. Doyle is included as a respondent in the caption of this matter although he did not appeal, respond, defend or appear in the matter before the Court of Appeals. Neither was Doyle affected by the action of the Court of Appeals; his name was carried in the caption of the case in the Court of Appeals through the original inadvertent error of petitioner's counsel in so captioning that matter. Petitioner identifies Doyle as a respondent in this matter and has served his counsel with a copy of this petition in order to prevent a possible failure to comply with Rule 33(1).

STATUTES INVOLVED

The statutory provisions herein involved are: Section 1, of the Labor Management Relations Act of 1947 (29 U.S.C. 141) and Sections 1, 2, 7, 8, and 10 of the National Labor Relations Act (29 U.S.C. 151, 152, 157, 158, and 160). They are printed in Appendix A, *infra*, pp. 11-15.

STATEMENT UNDER RULE 33 (2) (b)

Since the proceeding draws into question the constitutionality of the National Labor Relations Act (29 U.S.C. Sec. 151 *et seq.*), an Act of Congress affecting the public interest, and neither the United States nor any agency, officer or employee thereof is a party, it is noted that 28 U.S.C. Sec. 2403 may be applicable.

No Court of the United States as defined by 28 U.S.C. Sec. 451 has, pursuant to 28 U.S.C. Sec. 2403 certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn in question.

STATEMENT

Petitioner was, in 1962, employed in a supervisory capacity by Pinkerton's National Detective Agency, Inc. (R. 3a). In December, 1962, petitioner filed suit in the Federal District Court for the Eastern District of Michigan seeking damages against the respondents, alleging that the respondents had conspired maliciously to publish false and defamatory matter, and that they did so publish such matter, which was *libelous per se*, concerning petitioner (R. 4a). The jurisdiction of the Federal Courts was invoked because of diversity of citizenship of the parties, and the amount in controversy (28 U.S.C., Sec. 1332). It

was alleged in petitioner's complaint that respondent Local 114 was a labor association and that respondents *Bilbrey* and *England* were officers of the Local (R. 3a).

Previous to the institution of the lawsuit by petitioner, his employer (Pinkerton's National Detective Agency) had caused a charge against Local 114 to be filed with the Detroit, Michigan, office of the National Labor Relations Board (NLRB), based upon the same scurrilous material described in petitioner's complaint (R. 18a). The Acting Regional Director, without a hearing, refused to issue a complaint (R. 23a) and his refusal was sustained by the Office of the General Counsel of the NLRB (R. 37a).

Respondents had, meanwhile, filed a motion to dismiss petitioner's complaint in the District Court based, primarily, upon the pre-emption doctrine of *San Diego Building Trades Council v. Garmon,* 359 US 236 (R. 9a, 19a).

In its opinion dated June 5, 1963 (R. 38a) the Trial Court granted the motion to dismiss the complaint as it applied to the respondents. (The Order of Dismissal was entered June 20, 1963, R. 44a). The Trial Court based its actions on the pre-emption doctrine of *Garmon* (R. 39a) and found a lack of jurisdiction of the subject matter in so far as the Local Union, Bilbrey and England were concerned.

The Trial Court also *retained* jurisdiction of the suit in so far as *Doyle* was concerned, (R. 39a saying):

> "Defendant Doyle has not moved for dismissal of the complaint against him, and the Court notes that the pre-emption argument would not appear to be applicable in his case. With dismissal of the other defendants, both suits are reduced to simple common-law tort actions. Local 114 has disclaimed any responsibility for the activities of defendant Doyle and this disclaimer has been upheld by both the Re-

> gional Director and the Office of Appeals of the NLRB. If, as alleged, defendant Doyle libeled Pinkerton's or Linn, this is a private matter which may aptly be resolved in this Court * * *."

The Court below affirmed the Order of Dismissal entered by the District Court on the express authority of *San Diego Building Trades Council v. Garmon,* 359 US 236 (1959). (Appendix B, p. 16.)

Petitioner had urged that the protection of an *individual's* good name and reputation was of such "compelling state interest" so as to come within the *Garmon* pre-emption rule exception. The Court of Appeals, while accepting the fact that the statements published concerning petitioner "were false, malicious, clearly libelous, and damaging" (Appendix B, p. 17) and conceding that a cease and desist order of the NLRB could not correct the harm done thereby to an individual, (Appendix B, p. 21), determined with poorly-concealed reluctance that the *Garmon* rule would permit an action for negligently caused damage to an auto fender, but foreclosed a Court from compensating an individual for maliciously caused damages to his name and reputation through a vicious libel (Appendix B, p. 21).

REASONS FOR GRANTING THE WRIT

1. A question of national importance is presented herein by reason of its basic effect on national labor-management relations.

Passage of labor-management relations statutes by the Congress and the legislatures of the several states and the decisions of this Court in such cases as *United Construction Workers v. Laburnum,* 347 US 656, and *United Automobile Workers v. Russell,* 356 US 634, have materially aided in bringing about an era which is relatively free

from the swinging of clubs and fists which so often marked union organizational activities in the first four decades of this century. The commission of personal and property damage has no more rightful place in unionization attempts or contract bargaining than it does in any other sphere of civilized man's activities. Accordingly, it is most proper that parties injured by such violent conduct be recompensed for the damages caused to their persons and property through recourse to appropriate court proceedings as defined by the traditional law of torts; and as a consistent corollary thereto, future damaging activities in kind may be ordered halted. The promotion of a sound and sensible national labor-management relations policy cannot, and thus far wisely has not, allowed destruction of property and physical harm to individuals to have any place in the conduct of union-management affairs.

Because unrestrained destruction of property and personal injury cannot be conducive to sound and sensible solutions to labor-management problems and differences, it should follow that vicious and malicious destruction of personal name, honor, integrity and reputation likewise cannot aid in the solution of these problems. To petitioner, the inherent truth of this statement is self-evident. Yet, the court below, and others which have considered this question[2] have concluded that the rationale of *San Diego Building Trades v. Garmon, supra,* has foreclosed the victim of a malicious libel from recourse to his historical right of action when such a tort has been committed

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[2] Supreme Court of Alaska by inference in *Hill v. Moe,* 367 P 2d 739, *cert. denied,* 370 US 916; Supreme Court of New Jersey in *Blum vs. International Association of Machinists, AFL-CIO,* 42 N.J. 389, 201 A 2d 46; Court of Common Pleas, Columbiana County, Ohio in *Schnell Tool & Die Corp. vs. United Steel Workers, AFL-CIO,* 200 N.E. 2d 727, affirmed Ohio Court of Appeals, 7th Dist., No. 852, see slip opinion, Appendix C, pp. 27-29, *infra.*

against him, if it is connected with a labor dispute. The Court of Appeals has left petitioner, and other individuals who are "employers" under the definition in Section 2 (2) of the NLRA [29 USC 152 (2)] (Appendix A, *infra*, p. 13) with only the *hope* that the National Labor Relations Board will decree that the offending union or individual tortfeasors must stop their scurrilous attacks against *him*. What is more important, the victim of such an attack *will never have the opportunity* to prove in Court that the maligning statements made are false.

The decision of the Court of Appeals has thus placed those occupying subservient or secondary "employers" status in a lawless gutter subject to the most vicious and malicious personal attacks imaginable, all without any effective method of recompense or redress. Literally read, the opinion of the court below invites, and can *open the door* to, another era of extremely unsavory labor-management relations.

It is respectfully suggested that until this Court speaks authoritatively concerning the viability of the time-honored remedies against malicious libel, even though it is committed in the course of a labor controversy, the legal, labor, management, and entire industrial communities will remain troubled by the opinion of the court below.

2. The decision of the court below is believed to be erroneous and in conflict with the holding of the Fourth Circuit in *Bouligny, Inc. v. United Steelworkers of America, AFL-CIO*, 336 F. 2d 160 (1964).

Bouligny involves a corporation's action for libel, growing out of an organizational campaign, filed against a labor union; the action was started in the North Carolina State Courts, and was removed "to the district court on the grounds both of diversity of citizenship and that the

subject matter of the action arises under the laws of the United States" [i.e., the National Labor Relations Act] 336 F. 2d at 161. Motion for remand back to the State court was filed by the corporation, denied by the District Court, but ordered by the Court of Appeals.

The Fourth Circuit held (after finding no diversity) that the National Labor Relations Act is concerned with libel in its *coercive* effect on labor-management relations but is *not* concerned with libel in its character as a common law tort, and that the suit for libel "is specifically within the aegis of the substantive state law" (336 F 2d at 165).

The *Bouligny* case was argued April 28, 1964, (15 days after the instant matter) and decided August 7, 1964, (approximately two months before the decision in the instant matter). In its thus contemporaneous holding that a libel committed during the course of a union's organizational campaign is within the power of a state court to remedy, *Bouligny* is at clear odds with the instant case.

Petitioner herein contends that *Bouligny* accurately states the law and that the decision in *Linn* is in error. It is necessary that this Court grant this petition to settle this dispute amongst the Circuit Courts of Appeal, and to correct the error committed by the Sixth Circuit Court of Appeals.

3. In holding that petitioner may not seek a jury trial to prove the gross falsity of the vicious accusations made against him, petitioner has been deprived of his most precious property—his good name and reputation—without due process of law.

By the reasoning of the court below, a person, such as petitioner, finding himself in a situation where he has been

maliciously accused of criminal activities and other vile actions, must prevail upon the management of the concern employing him to file a charge with the National Labor Relations Board, must have the Regional Director consent to issue a complaint and hold a hearing, and must further hope that the hearing will concern itself with the truth or falsity of the matters alleged. Conceivably, even if one were to get past the first and second of these hurdles, he will yet be unable to have his reputation cleared; conceivably, the mere utterance of certain words could be classified as either contrary to the Act, and an "unfair labor practice," or, fair comment. Neither decision would cure the harm done by the *personal* injury involved.

Amendment V, to the United States Constitution specifically prohibits the Congress from passage of any act which deprives one of property without due process of law. Petitioner contends that, if the opinion of the Court below accurately states the import of the National Labor Relations Act, then, insofar as that legislation deprives petitioner of the *right* to maintain his character, good name and reputation, that legislation is unconstitutional. Petitioner further contends, however, that the NLRA does not so deprive him of that right, and that reliance of the Court below on the *Garmon* decision, *supra*, is misplaced.[3]

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[3] We submit that the Court of Appeals, in finding additional support for its ruling in the instant case through reliance on the post-*Garmon* decisions of *Local 100 United Ass'n of Journeymen & Apprentices vs. Borden*, 373 US 690 (1963), and *Local 207, Int. Ass'n of Bridge Workers vs. Perko*, 373 US 701 (1963), is also in error. At least two features distinguish *Borden* and *Perko* from the instant case. Pursuant to Sec. 10(c) of the National Labor Relations Act [29 USC 160(c)] it could have been within the Board's *competence* to have awarded lost back wages to both Borden and Perko. The Board could award Linn nothing which could possibly recompense him. Secondly, as stated in *Borden*, the conduct on which the suit was based was of such kind that its *lawfulness* could *initially* be judged *only* by the NLRB, applying federal standards. (373 US at 698.) The *lawfulness* of the conduct complained of in the present case must be judged by applying the standards of the state substantive law. *Bouligny vs. Steelworkers, supra*, at p. 165.

Petitioner prays that this Court will grant his petition and correct the erroneous reliance upon, and the expansion of *Garmon*.

Our position is that a reasonable man, with a minimal amount of historical, political and religious awareness, must abhor a concept that Congress did intend to deprive an individual of his common law right to protect his good name in a court of law and further distort such concept to pretend that deprivation of such right is in the national interest.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: January 4, 1965

APPENDIX A

SHORT TITLE AND DECLARATION OF POLICY

Section 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

NATIONAL LABOR RELATIONS ACT

FINDINGS AND POLICIES

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of bur-

dening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

Sec. 2. When used in this Act—

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

RIGHTS OF EMPLOYEES

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

Section 8:

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A)employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

* * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

PREVENTION OF UNFAIR LABOR PRACTICES

Section 10. (a) The Board is empowered, as hereinafter provided to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer of labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

APPENDIX B

OPINIONS BELOW

No. 15548

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

WILLIAM C. LINN,
Plaintiff-Appellant,
v.
UNITED PLANT GUARD WORKERS OF AMERICA, Local 114, a labor association, LEO J. DOYLE, BENTON I. BILBREY, W. T. ENGLAND, jointly and severally,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Michigan.

Decided October 13, 1964.

Before CECIL and O'SULLIVAN, Circuit Judges, and MILLER, District Judge.

O'SULLIVAN, Circuit Judge. This appeal presents the question whether the National Labor Relations Board has preempted the diversity jurisdiction of a district court to entertain an action to recover damages for libel committed by a union and its officers in the course of, and arising out of tactics employed in, a union's organization campaign. The District Court so held in dismissing, on motion, such an action commenced by a management official against a union and its officers. On the authority of *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), and the Supreme Court's decisions following *Garmon*, we affirm.

Plaintiff-appellant, William C. Linn, was at the times involved in 1962 an assistant general manager for the North Central Region of Pinkerton's National Detective Agency, Inc. The complaint charged that during a campaign to organize Pinkerton's employees, defendant-appellee, United Plant Guard Workers of America, Local 114, and defendants-appellees, Benton I. Bilbrey, President of the union local and W. T. England, its Vice-President, and one Leo J. Doyle, a Pinkerton guard, conspired to and did utter, publish, circulate and mail written matter maliciously libelling and defaming plaintiff Linn. . For consideration of the question before us we accept that these statements were false, malicious, clearly libelous and damaging to plaintiff Linn, albeit they were relevant to the union's campaign.

Linn's employer filed an unfair labor practice charge against the union based upon the libelous material, but the Board's Acting Regional Director refused to issue a complaint upon his determination that "there is no evidence that the union was involved in any respect in the drafting and circulation of the leaflets." This refusal was affirmed by the N.L.R.B. Office of Appeals on February 13, 1963. On June 5, 1963, the District Judge filed a memorandum opinion supporting his order of dismissal stating:

> "If Local 114 or its President or Vice-President were in fact responsible for distributing to Pinkerton's employees a false and defamatory publication which would tend to affect adversely the relations between Pinkerton's and its employees, this would arguably constitute an unfair labor practice under Section 8(b) of the National Labor Relations Act. * * *"

and from this reasoned that the District Court was "without authority to give plaintiffs any relief against the moving defendants" (the union and its officers) under the now familiar language of *Garmon:* "when an activity is arguably subject to §7 or §8 of the Act, the States as well as

the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." 359 U.S. 245.

The *Garmon* decision appears to have been accepted as setting at rest the uncertainties that had remained as to just what traditional remedies could still be employed in the state courts to redress wrongs committed in the collisions between employers and employees' unions. It has been assumed that since Garmon the states can intrude into this field only when some "compelling state interest" such as "the maintenance of domestic peace" called for exercise of a state's traditional remedies. And it likewise is assumed that only violence or the threat of violence will permit a state court to act. The considerations urged to sustain judicial jurisdiction in the present case were tentatively reflected in pre-*Garmon* decisions of the Supreme Court, and after full consideration were limited to the particular circumstances of those decisions by *Garmon* and subsequent decisions. Thus in *United Automobile Workers v. Russell*, 356 U.S. 634 (1958), and *United Constr. Workers v. Laburnum Constr. Corp.*, 347 U.S. 656, 98 L. Ed. 1025 (1954), the Supreme Court affirmed state court judgments for damages inflicted by the tortious conduct of labor unions committed as part of their organizational efforts. While each of these cases involved violence or threats of violence, neither of them relied on *violence* as the essential ingredient of permissible state action. Rather, it appeared that state jurisdiction was sustained because of the inadequacy of the National Labor Relations Act as a means of compensating for damaging torts. The opening paragraph of *Laburnum* announced the breadth of its holding.

> "The question before us is whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a *common-law tort action for damages* as to preclude an appropriate state court from hearing and determining its issues where such

> conduct constitutes an unfair labor practice under that Act. *For the reasons hereafter stated, we hold that it has not.* 347 U.S. 657, 98 L. Ed. 1027. (Emphasis supplied.)

Laburnum further expressed the view that "to the extent * * * that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, [as distinguished from preventive procedure], there is no ground for concluding that existing * * * *liabilities for tortious conduct have been eliminated.*" 347 U.S. 665, 98 L. Ed. 1031. (Emphasis supplied.) The Supreme Court also there took occasion to distinguish between its holding of Federal preemption in *Garner v. Teamsters Local* 776, 346 U.S. 485, 98 L. Ed. 228 (1953) and its approval of state jurisdiction in the *Laburnum* case then before it, saying that,

> "In the Garner Case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injustice procedure conflicted. Here Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. *For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation.* 347 U.S. 663-64, 98 L. Ed. 1031. (Emphasis supplied.)

The decision in *United Automobile Workers v. Russell*, 356 U.S. 634 (1958) appeared to express the same concern for retaining a state's right to redress damages inflicted on its citizens by tortious misconduct committed during the course of labor strife. As in *Laburnum*, the tortious conduct contained a *threat* of violence, since "the [picket] line consisted of persons standing along the street or walking in a compact circle across the entire traveled portion of the street. Such pickets, on July 18, by force of numbers, threats of bodily harm to Russell and of damage to his property, prevented him from reaching the plant gates.

At least one striker took hold of Russell's automobile." While mentioning the threat of violence, it does not appear that *violence* was the sole reason for allowing Russell to recover damages for tortious interference with his means of earning a livelihood. Rather, the Court seemed to emphasize the lack of power in the NLRB to grant adequate relief. It said, "this section [§10(c) of the Act] is far from being an express grant of exclusive jurisdiction superseding common-law-actions, by either an employer or an employee, to recover damages caused by the tortious conduct of a union. * * * We conclude that an employee's right to recover, in the state courts, *all* damages caused him by this kind of tortious conduct cannot fairly be said to be pre-empted without a clearer declaration of congressional policy than we find here." 356 U.S. 642, 646.

Without any intervening relevant amendment to the National Labor Relations Act, however, the Court in *Garmon* limited the application of *Laburnum* and *Russell* to torts involving violence.

> "It is true that we [in *Laburnum* and *Russell*] have allowed the States to grant compensation for the consequences as defined by the traditional law of torts, of conduct marked by *violence and imminent threats to the public order*." * * * State jurisdiction has prevailed in these situations because the *compelling state interest*, in the scheme of our federalism, *in the maintenance of domestic* peace is not overridden in the absence of clearly expressed congressional direction. We recognize that the opinion in *United Construction Workers v. Laburnum Corp.*, 347 U.S. 656, found support in the fact that the state remedy had no federal counterpart. But that decision was determined, as is demonstrated by the question to which review was restricted, by the 'type of conduct' involved, *i. e.*, 'intimidation and threats of violence.' In the present case there is no such compelling state interest." 359 U.S. 247-48. (Emphasis supplied.)

The plaintiff here argues that we should recognize as a "compelling state interest" the protection of an individual's good name and reputation and thus come within the one exception to the preemptive rule of *Garmon*. It is indeed clear that physical assault and battery and libelous assault upon a citizen's good name are both torts that cannot be compensated by a "cease and desist" order of the NLRB. An individual might quickly recover from the bruises and wounds of a physical assault and at little expense have a crumpled fender bumped out, but a lifetime may not be sufficient to restore a reputation hurt by the circulation of a vicious libel. We are persuaded, however, that *Garmon* has drawn the distinction which permits the one to be remedied by traditional court action and limits the other to the relief, if any, that may come from an order of the NLRB. And if a Regional Director's refusal to issue a complaint is sustained by the Board's General Counsel as happened to the company's charge in this case, the libelled individual is at the end of the remedial road. Compare *Dunn v. Retail Clerks Internat'l Ass'n*, 307 F(2) 285 (CA 6, 1962).

Our conclusion that *Garmon* has foreclosed plaintiff's entry into the courts is supported by the later decisions in *Local 100, United Ass'n of Journeymen & Apprentices v. Borden*, 373 U.S. 690 (1963) and *Local 207, Internat'l Ass'n of Bridge Workers v. Perko*, 373 U.S. 701 (1963) wherein, in obedience to *Garmon*, state courts were denied jurisdiction to entertain actions by workmen for intentional and tortious interference by a union with their means of earning a livelihood. Such interference involved no *physical violence* and therefore the one exception recognized in *Garmon* was absent. We think that there would be as "compelling" a state interest to protect the workman's right to earn his wages as to protect his employer's good name, but such an interest was found insufficient justification for state jurisdiction in *Borden* and *Perko*.

Such courts as have had occasion since *Garmon* to consider the question of federal preemption of libel suits arising out of union organizational activity have concluded that

state jurisdiction does not exist. *Hill v. Moe*, 367 P(2) 739 (Alaska 1961), *cert. denied*, 370 U.S. 916 (1962); *Blum v. International Ass'n of Machinists*, 42 N.J. 389, 201 A(2) 46 (1964); *Schnell Tool & Die Corp. v. Steel Workers*, 32 U.S.L. Week 2534 (Ohio Com. Pl. March 13, 1964). The only expression of a contrary view is found in the opinion of the three dissenters in *Blum v. Internat'l Ass'n of Machinists, AFL-CIO, supra.* We are satisfied that under *Garmon* these dissenters were wrong. We respect their dissent, however, as an understandable cry of anguish.

Our holding in this case is of course limited to a suit for libelous statements growing out of and relevant to a union's compaign to organize the employees of an employer subject to the National Labor Relations Act. We mention too that it is not necessary for us to inquire whether the individual defendant, Doyle, a Pinkerton employee, could have obtained dismissal by appropriate motion. He did not so move.

Judgment affirmed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PINKERTON'S NATIONAL DETECTIVE AGENCY, INC., a Delaware Corporation,
Plaintiff,
v.
UNITED PLANT GUARD WORKERS OF AMERICA, Local 114, a labor association, LEO J. DOYLE, BENTON I. BILBREY, W. T. ENGLAND, jointly and severally,
Defendants.
Civil Action No. 23330

WILLIAM C. LINN,
Plaintiff,
v.
UNITED PLANT GUARD WORKERS OF AMERICA, Local 114, a labor association, LEO J. DOYLE, BENTON I. BILBREY, W. T. ENGLAND, jointly and severally,
Defendants.
Civil Action No. 23331

MEMORANDUM OF OPINION GRANTING DEFENDANTS' MOTION TO DISMISS

These are libel actions, based upon certain defamatory communications allegedly sent by defendants to employees of Pinkerton's National Detective Agency, hereinafter referred to as Pinkerton's. The plaintiff in Civil Action No. 23331, William C. Linn, is a supervisory employee of Pinkerton's who alleges that he was personally libeled by the communications in question.

Defendants in both actions are Local 114 of the United Plant Guard Workers of America, Benton I. Bilbrey, President of Local 114, W. T. England, Vice-President of Local 114, and one Leo J. Doyle, an employee of Pinkerton's who is not alleged to be either an officer or a member of Local 114.

There is no independent federal ground for the bringing of these actions in this Court. If they are properly before this Court, they can only be here on the basis of diversity of citizenship.

Prior to the commencement of these actions, Pinkerton's requested the National Labor Relations Board, hereinafter the NLRB, to issue a complaint against Local 114 on the ground that publication of the allegedly libelous communications constituted an unfair labor practice. After making his investigation, the Regional Director refused to issue a complaint. He found that the communications in question had been prepared by defendant Doyle, who was not a member of Local 114 and who had neither real nor apparent authority to act on behalf of Local 114. He concluded that there was no evidence to establish that Local 114 was involved in any way in the drafting or circulation of the publications in question. This decision was appealed by Pinkerton's. The Appeals Office of the National Labor Relations Board on February 13 denied the appeal and sustained the ruling of the Regional Director.

Defendant Local 114, Bilbrey and England have moved for dismissal of both actions on the ground, inter alia, that exclusive jurisdiction over the subject matter lies in the NLRB and that this Court lacks authority to grant plaintiffs any relief. So far as the moving defendants are concerned, this contention is sound and must be sustained.

If Local 114 or its President or Vice-President were in fact responsible for distributing to Pinkerton's employees a false and defamatory publication which would tend to affect adversely the relations between Pinkerton's and its employees, this would arguably constitute an unfair labor

practice under Section 8 (b) of the National Labor Relations Act, a fact which Pinkerton's has tacitly admitted in requesting the Regional Director of the NLRB to issue a complaint. Even if Pinkerton's had not initially followed this course of action, however, this Court, sitting in these diversity actions as, "in effect, only another court of the State," *Guaranty Trust Co. v. York* (1945), 326 US 99, 108, would be without authority to give plaintiffs any relief against the moving defendants. The applicable rule has been laid down by the Supreme Court in *San Diego Building Trades v. Garmon* (1959), 359 US 236:

> "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Sec. 7 of the Taft-Hartley Act, or constitute an unfair labor practice under Sec. 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations. Regardless of the mode adopted to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes." 359 US 236, 244.

The moving defendants are entitled to dismissal of both actions as to them. An appropriate order may be presented.

Defendant Doyle has not moved for dismissal of the complaints against him, and the Court notes that the preemption argument would not appear to be applicable in his case. With dismissal of the other defendants, both suits are reduced to simple common-law tort actions. Local 114 has disclaimed any responsibility for the activities of defendant Doyle and this disclaimer has been upheld by both

the Regional Director and the Office of Appeals of the NLRB. If, as alleged, defendant Doyle libeled Pinkerton's or Linn, this is a private matter which may aptly be resolved in this Court, if the usual jurisdictional requirements have been satisfied.

On the question of jurisdictional requirements, the Court observes that in both of these actions plaintiffs have attempted to satisfy the statutory requirement for diversity of citizenship by making certain allegations regarding the "residence" of the several plaintiffs and defendants. It is well-established that allegations regarding the residence of the parties are not sufficient to support gederal jurisdiction in an action brought in a federal court on the basis of diversity of citizenship. *Fort Knox Transit v. Humphrey* (6th Cir 1945), 151 F2d 602.

If plaintiffs have not amended their complaints within ten days of the filing of this memorandum to sufficiently alleged diversity of citizenship, defendant Doyle may present an order of dismissal to the Court for signature.

Talbot Smith,
United States District Judge.

June 5, 1963.
Detroit, Michigan.

APPENDIX C

OPINION, OHIO COURT OF APPEALS No. 852

SCHNELL TOOL & DIE CORPORATION vs. UNITED STEELWORKERS

STATE OF OHIO, COLUMBIANA COUNTY
IN THE COURT OF OPPEALS
SEVENTH DISTRICT

SCHNELL TOOL & DIE CORPORATION and SALEM STAMPING & MANUFACTURING COMPANY, *Plaintiffs-Appellants*, v. UNITED STEELWORKERS OF AMERICA, AFL-CIO, et al., *Defendants-Appellees.*	Case No. 852

OPINION

Appearances: Baker, Hostetler & Patterson, Cleveland, Ohio, and Ralph Atkinson, Salem, Ohio, for plaintiffs-appellants; Green, Schiavoni, Murphy & Stevens, Youngstown, Ohio, for defendants-appellees.

Hon. Paul W. Brown,
Hon. James G. France,
Hon. George M. Jones, JJ.

Dated: December 3, 1964

Brown, P. J.

Let it be stated at the outset that this court cannot conclude from an examination of the Labor Management Relations Act, as amended, that it was the intention of Congress to preempt the jurisdiction of a state court to grant a rem-

edy to redress damages inflicted by tortious misconduct during the course of labor strife.

It would seem easy to require Congress to express in plain language its intention to pass from the courts to the National Labor Relations Board the power to deal with the valuable right of one to be secure in his good name in these situations.

The United States Supreme Court in San Diego Building Trades Council, et al. v. Garmon, 359 U. S. 236, 3 L. Ed. (2d) 775, when discussing the reasons for concluding that the states retain the right to redress damage claims founded upon conduct marked by violence and do not retain a similar right in other tort cases, speak of "compelling state interest" as opposed to "the danger of state interference with national policy". We do not see how the pendency of an action for damages in a state court can amount to "interference with national policcy" as expressed by the Act.

However, it is the unanimous view of this court that we no longer have jurisdiction to consider actions for damages for non-violent tortious conduct allegedly committed by a union, its officers or agents, in the course of a labor dispute involving employer in interstate commerce. We find this to be the true import of the pronouncement of the majority of the United States Supreme Court in San Diego Building Trade Council, et al. v. Garmon, 359 U. S. 236, 3 L. Ed. (2d) 775. That case, and particularly headnote 4 thereof, held that the effect of the Labor Management Act as "translated into concreteness by the process of litigating elucidation" eliminated the power of the state court to function in this area.

The Garmon case specifically holds that an activity subject to Section 7 or Section 8 of the Act is so protected by the Act that the states, as well as the federal courts, must defer to the exclusive competence of the National Labor Relations Board.

Our view of the effect of Garmon upon this cause of action is supported by he later decision originating in this district and styled Local 207 International Association of Bridge Workers v. Perko, 373 U. S. 701, as well as Hill v. Moe, 367 Pacific (2d) 739, cert. denied 370 U. S. 916; and Blum v. International Association of Machinists, 42 N. J. 389, 201 Atlantic (2d) 46.

Judgment of the Court below is therefore affirmed.

France, J., concurs.
Jones, J., concurs.

Approved:
Paul W. Brown,
Judge.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 45

WILLIAM C. LINN,
Petitioner,

vs.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, a Labor Association, LEO J. DOYLE, BENTON I. BILBREY, and W. T. ENGLAND,
Jointly and Severally,
Respondents

~~MOTION FOR LEAVE TO~~ SUPPLEMENT APPENDIX TO PETITION FOR A WRIT OF CERTIORARI AND MOTION FOR EXTENSION OF TIME FOR FILING BRIEF IN OPPOSITION TO CERTIORARI

DONALD F. WELDAY,
Counsel for Petitioner,
Fifth Floor, Northland Tower,
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WELDAY, O'LEARY, GOLDSTONE & BICHAN,
Of Counsel.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 819

WILLIAM C. LINN,
Petitioner,

vs.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, a Labor Association, LEO J. DOYLE, BENTON I. BILBREY, and W. T. ENGLAND,
Jointly and Severally,
Respondents

MOTION FOR LEAVE TO SUPPLEMENT APPENDIX TO PETITION FOR A WRIT OF CERTIORARI AND MOTION FOR EXTENSION OF TIME FOR FILING BRIEF IN OPPOSITION TO CERTIORARI

Now comes William C. Linn, petitioner in the above captioned matter, by his attorney, Donald F. Welday, pursuant to Rule 35 of the Rules of the Supreme Court of the United States, and moves this Honorable Court for leave to supplement the Appendix heretofore filed with his

Petition for a Writ of Certiorari and, for an extension of the time within which respondents hereto may file a brief in opposition to said petition for a writ of certiorari. In support of this Motion, counsel says:

1. That on January 9, 1965, a Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, in the matter styled and captioned as above, was duly and timely filed with this Honorable Court, and service thereof was made upon counsel for the named respondents and upon the Solicitor General of the United States.

2. That on January 5, 1965, the Supreme Court of Pennsylvania decided the case of *Meyer et al. v. Joint Council 53, International Brotherhood of Teamsters, et al.*, ... Pa. ..., ... A.2d ..., 33 Law Week 2354 (issue of January 19, 1965).

3. That petitioner and his counsel were not and could not have been aware of the Pennsylvania decision until after the petition for a writ of certiorari in the instant matter had been printed and filed with this Court.

4. The opinion of the Pennsylvania Court in *Meyer* is directly in point with the issues presented to the Court below in the instant matter, and is in direct conflict with the decision of the Court below (e.g., *Meyer v. International Brotherhood of Teamsters, supra,* fn. 10). (*Infra,* p. 9.)

5. That because the *Meyer* decision is in strong support of the position of petitioner as recited in paragraphs 1 and 3 under the heading "Reasons for Granting the Writ," in the petition heretofore filed and because the *Meyer* decision *clearly* demonstrates the conflict of decisions presented in paragraph 2 under said heading in the instant petition,

and pointedly notes the unsettled nature of the issue presented in the instant petition for a writ of certiorari, counsel would have, had he been aware thereof, included the aforesaid *Meyer* decision, in its entirety in the Appendix to the petition heretofore filed in this cause.

6. Petitioner and his counsel sincerely and honestly believe that the inclusion of the decision of the Pennsylvania Supreme Court in *Meyer v. International Brotherhood of Teamsters, supra,* in petition heretofore filed in this matter, will be of material and substantial aid and interest to this Honorable Court in arriving at its decision on said petition, and should be considered by this Court in arriving at that decision.

7. Petitioner and his counsel believe that, in the interests of justice and in accordance with the spirit of and the permissive authority contained in Rule 34 of the Rules of the Supreme Court, should petitioner be allowed to supplement the Appendix to his petition for a writ of certiorari, as herein prayed, the respondents hereto should be allowed additional time within which they might file briefs in opposition to the petition.

8. This motion is not made contumaciously or for purposes of delay, or confusion; to the contrary, it is made solely for the purpose of presenting to this Honorable Court that information which petitioner and his counsel honestly believe should be so presented.

Wherefore, petitioner respectfully moves this Honorable Court for leave to file and have considered as part of the Appendix to his Petition for a Writ of Certiorari, the decision in full of the Pennsylvania Supreme Court in the case of *Meyer et al. v. Joint Council 53, International Brotherhood of Teamsters et al.* (annexed hereto at pages 5 to 19) under caption "Appendix D") and further moves this Hon-

orable Court for an extension of time for the filing of briefs in opposition to the petition for a writ of certiorari.

DONALD F. WELDAY,
Counsel for Petitioner,

WELDAY, O'LEARY, GOLDSTONE & BICHAN,
Fifth Floor, Northland Towers,
Southfield, Michigan 48076

Dated: January 21, 1965.

"APPENDIX D"

OPINION OF THE COURT

(Filed January 5, 1965)

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

Nos. 269, 272 January Term, 1964

CHARLES MEYER, et al. v. JOINT COUNCIL 53, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, et al., *Appellants.*	Appeals from the Order of the Court of Common Pleas No. 5 (Heard in C.P. No. 6) of the County of Philadelphia, as of June Term, 1963, No. 2479.

ROBERTS, J.

Plaintiffs, six individuals, filed a complaint in trespass against seven individuals and five unincorporated labor organizations seeking damages for libel. The alleged defamation appeared in a printed tabloid called "Teamsters Extra"[1] which was specially issued during a campaign preceding a National Labor Relations Board [NLRB] representation election.[2]

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[1] A copy of the tabloid, Vol. 1, No. 1, is reproduced in the Appendix.

[2] Plaintiffs were campaigning in behalf of a labor organization known as "The Voice of the Teamsters Democratic Organizing Committee" [Voice]. Voice was attempting to oust the defendant local unions as collective bargaining representative for certain employees in a multi-employer association bargaining unit known as "Motor Transport Relations, Inc."

(Continued on next page)

The complaint alleged that defendants, with willful and malicious intent to injure plaintiffs, published articles, sketches, and pictures in the "Teamsters Extra" which contained malicious and defamatory material. Among the statements was one which proclaimed that the top officers, members of the executive board, and active leaders of the organization have been individually convicted of one or more of a list of crimes. On the list were such crimes as burglary, manslaughter, rape, sodomy, and corrupting the morals of a minor.[3]

(Continued from preceding page)

The tabloid in question was circulated in November 1962, about one week before the election was held. After the election was won by defendant unions, Voice filed with the NLRB objections to the conduct of the election and to conduct affecting the results of the election.

One objection alleged that defendant unions had published criminally libelous statements concering Voice executive board members, and that the statements influenced employees not to vote for Voice and prevented the conduct of the election in a proper atmosphere. The Regional Director of the NLRB was of the view that this objection should be overruled since the allegations involved were not within the special knowledge of the defendants, and Voice had ample opportunity to correct the alleged distortions and misrepresentations. The Board accepted this recommendation.

The Board, however, set aside the election on the basis of other recommendations made by the Regional Director.

[3] In its complete listing, the tabloid enumerated assault and battery, disorderly conduct, public indecency, burglary, larceny of auto, non-support of family, illegal lottery, hold-up at point of gun, receiving stolen goods, larceny by pick pocket, robbery, unlawful possession of drugs, assault and battery with intent to ravish and rape, rape, sodomy, obscene literature, manslaughter, attempted extortion, booking gambling bets, impersonating police officer, habitual drunk, larceny, corrupting the morals of a minor.

Plaintiffs alleged that use of the pictures, sketches, and words was meant to convey to readers that plaintiffs were hardened criminals, bent on violence, guilty of serious crimes such as rape and burglary and that they were unworthy of consideration as union leaders.

Defendants filed preliminary objections which challenged jurisdiction. These were dismissed by the court below. On this appeal attacking the lower court's ruling, defendants have raised the question of whether the jurisdiction of our state courts is preempted by provisions of the National Labor Relations Act. Certain of the defendants have raised an additional question concerning exhaustion of internal union remedies.

I.

We consider, first, the claim of federal preemption. The landmark case involving preemption in the labor field is *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 79 S. Ct. 773 (1959), which held that a state court lacked jurisdiction to award damages for conduct constituting a tortious unfair labor practice under state law. In that case, the tortious activity consisted of peaceful union picketing designed to compel employers to execute a contract which would provide that only union members, or workers who applied for union membership within 30 days, would remain in their employ.[4] Recognizing a congressional purpose, as expressed in relevant legislation, to foster the development of a uniform national labor policy through administrative regulation by the NLRB, the Supreme Court of the United States based its holding on the general principle that both state and federal courts

[4] The employers had refused to execute the contract, claiming that none of the employees had shown a desire to join a union, and that, in any event, they could not accept such an arrangement until one of the unions had been designated by the employees as a collective bargaining agent. It was alleged that the peaceful picketing was designed to exert pressure on customers and suppliers in order to persuade them to stop dealing with the employers and to thereby compel execution of the proposed contract.

must defer to the exclusive competence of the Board when the activity involved is arguably subject to Section 7[5] or Section 8[6] of the National Labor Relations Act. The Supreme Court further noted that previous cases permitting state courts to award damages for tortious activities marked by violence and imminent threats to public order were based on the principle that "the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overriden in the absence of clearly expressed congressional direction." *Id.* at 247, 79 S. Ct. at 781. The Court found no such interest to be involved in the *Garmon* case.

We assume, as defendants contend, that the activities of the defendants in the present case are arguably subject to Section 7[7] or 8[8] of the Act. But even assuming this, we still reach the conclusion that our state courts are not precluded from exercising jurisdiction over libel actions

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[5] Act of July 5, 1935, c. 372, §7, 49 Stat. 452, as amended, 29 U.S.C.A. §157. *Infra* note 7.

[6] Act of July 5, 1935, c. 372, §8, 49 Stat. 452, as amended, 29 U.S.C.A. §158. *Infra* note 8.

[7] "Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *." §7, *supra* note 5.

[8] Section 8 proscribes certain unfair labor practices. In addition, among its provisions is subsection (c) which reads:

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit." §8, *supra*, note 6.

arising from labor activities.[9] Following the principles set forth in *Garmon*, the question we must determine is whether there is a compelling state interest, especially in the maintenance of domestic peace, upon which state jurisdiction over a libel suit can be predicated.[10] We believe that such an interest does exist.

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[9] Some courts which have faced the question have decided that state jurisdiction over libel published in labor disputes has been preempted by NLRB jurisdiction. *Linn v. United Plant Guard Workers*, 337 F.2d 68 (6th Cir. 1964); *Blum v. Int'l Ass'n of Machinists*, 42 N.J. 389, 201 A.2d 46 (1964); *Hill v. Moe*, 367 P.2d 739 (Sup. Ct. Alaska 1961), *cert. denied*, 370 U.S. 916, 82 S.Ct. 1554 (1962); *Warehouse & Produce Workers Local 599, IBT v. United States Gypsum Co.*, 50 CCH Lab. Cas. 19,196 (Super. Ct. Wash. 1963); *Schnell Tool & Die Corp. v. United Steelworkers*, 200 N.E.2d 727 (Ohio C.P. 1964); *cf. Teamsters Local 150, IBT v. Superior Court*, 39 Cal. Rep. 590, 50 CCH Lab. Cas. 19,184 (Calif. Dist. Ct. App. 1964) (refusing injunction for libel). Most of these cases have relied on *Blum, supra*.

A result in accord with our view was reached in *California Dump Truck Owners Ass'n v. Joint Council of Teamsters*, 45 CCH Lab. Cas. 50,546 (Calif. Super. Ct. 1962). And see *Salzhandler v. Caputo*, 316 F.2d 445, 451 (2d Cir.), *cert. denied*, 375 U.S. 946, 84 S.Ct. 344 (1963) (dictum), to the effect that libelous statements in labor activities can be the basis for civil suits. See Cox, "Federalism in the Law of Labor Relations," 67 Harv. L. Rev. 1297, 1321 (1954): "Words privileged under NLRA Section 8(c) may give union leaders a cause for action for defamation." See also *Cussack v. Moran*, 46 CCH Lab. Cas. 50,749 (Sup. Ct. N.Y. 1963) (implied) (granting damages for labor libel).

[10] In *Linn v. United Plant Guard Workers, supra* note 9, the court of appeals held that neither state nor federal jurisdiction exist where the libelous statements involved grew out of a union organizational campaign. The theory on which this holding was predicated was that under *Garmon* only violence or the threat of violence would permit the exercise of such jurisdiction. We cannot agree that the language used in *Garmon* justifies such a narrow interpretation of the area of jurisdiction left to the state and federal courts. (See also note 16 *infra*.) *Compare* Michelman, "State Power to Govern Concerted Employee Activities," 74 Harv. L. Rev. 641, 667 (1961):

> "Thus, if the statements are, as a matter of state law, defamatory and untrue, an employer should have access to the usual remedies for libel or slander. Nor would this seem to be an appropriate occasion for requiring prior submission of the case to the NLRB. Not only are state courts more accustomed to dealing with such issues than is the Board but since the very elements of the state cause of action will establish that the conduct is not federally privileged, there is little danger that the effectuation of state policy will destroy a privilege intended to be conferred by federal law." (Footnote omitted.)

In determining that there is such an interest which permits the court below to exercise jurisdiction, we find persuasive the language used in *Garmon* and by the same author in *Beauharnais v. Illinois*, 343 U.S. 250, 72 S. Ct. 725 (1952). In *Garmon* the Court explained the important policies which permit state jurisdiction even where the activities involved are arguably subject to NLRB jurisdiction:

> "[D]ue regard for the presuppositions of our embracing federal system, including the principle of diffusion of power not as a matter of doctrinaire localism but as a promoter of democracy, has required us not to find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act * * *. Or where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act." *Id.* at 243, 79 S.Ct. at 779.

Writing for the majority in *Beauharnais*, Justice Frankfurter (the writer of *Garmon*) said in reference to an Illinois statute:

> "Moreover, the [Illinois] Supreme Court's characterization of the words prohibited by the statute as those 'liable to cause violence and disorder' paraphrases the traditional justification for punishing libels criminally, namely their 'tendency to cause breach of the peace.'" *Id.* at 254, 72 S.Ct. at 729.

Justice Frankfurter went on to reiterate that:

> "'There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd

> and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly out-weighed by the social interest in order and morality. "Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument."'" *Id.* at 255-57, 72 S. Ct. at 730-31.[11]

The clear and historically concerned interest of the state in providing a peaceful forum to which individuals whose reputations have been damaged by false and injurious statements can bring their claims should not be frustrated

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[11] In *Blum v. Int'l Ass'n of Machinists, supra* note 9, Mr. Justice Francis, writing for a three justice minority of the Supreme Court of New Jersey, recently re-emphasized the remarkably persuasive decisional premise of Mr. Justice Frankfurter in *Beauharnais.* Justice Francis wrote:

> "Libel is a crime at common law. It became such primarily because of its potentiality for incitement to violence and consequent breach of the peace. * * * [H]uman nature has not changed very much and the capacity of defamatory writings to incite violence remains with us. Therefore, I believe that if damage actions based on violence on the part of an employer or union are not considered withdrawn from the jurisdictional competence of the state courts, such actions based on libelous utterances on the part of either group, the tendency of which is to trigger violence, ought to be left to the state sovereignty as well. I can see nothing in the language of the Labor Management Relations Act which preempts the one and leaves us the other." 42 N.J. at —, 201 A.2d at 54-55.

See also Blackstone, Commentaries 813 (Gavit ed. 1941) ("The direct tendency of these libels is the breach of public peace, by stirring up the objects of them to revenge and perhaps to bloodshed.").

in the absence of a clear expression of congressional intent.[12] Our review of legislative history reveals no such express intent, nor can we find any such implicit necessity. We should especially protect the significant state interest where the "slight social value" of the utterances "as a step to truth" is so clearly out-weighed by countervailing, meaningful social interests.[13]

Nor would the forum provided by the NLRB adequately protect the state interest involved since libelous utterances may frequently be regarded as immaterial or insignificant in relation to the labor issues involved, and, therefore, may not motivate the NLRB to set aside an election. A deep-seated state interest should not be withdrawn from state jurisdiction by virtue of such extremely peripheral labor activity.[14]

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[12] The maintenance of peace as a purpose of civil actions of libel has recently been recognized by the Supreme Court of the United States. *Garrison v. Louisiana*, — U.S. —, ——, 85 S. Ct. 209, 213 (1964). See also Emerson, "Toward a General Theory of the First Amendment," 72 Yale L.J. 877, 924 (1963).

The danger in libel is different from that nebulous danger involved where a state attempts to restrict one person's action because it may be generally disliked by another person. Cf. *Edwards v. South Carolina*, 372 U.S. 229, 83 S. Ct. 68 (1963). In a libel case the danger is real since, by defamation, one person literally attacks another's reputation. There is direct conflict and effrontery.

[13] In many respects, libelous use of material here is similar to a smear campaign in an election for public office. In either instance is there a purposeful social or public need to encourage such irrelevant and harmful activity by granting absolute protection against deliberate libel at the expense of fundamental state interests by withdrawing state jurisdiction so that intentional libel may be privileged and unrestrained. It is inconceivable that so vital a state interest should be destroyed and its citizens afforded no protection against intentional libel in the absence of clear congressional mandate to that effect.

[14] The extent to which such utterances are peripheral to Board concerns is illustrated by the complete insignificance of defamation, as such, in Board determinations to set aside elections.

(Continued on next page)

We have said that the activity involved in this case is peripheral to the labor dispute. In fact, in entertaining suits for libel, our courts deal with an interest completely different from that with which the NLRB deals. The NLRB is not interested in protecting reputation, or in deterring violence. Its concern is with insuring that an employee's right of free choice is not interfered with by coercion, falsehood or emotion.[15] On the other hand, the state jurisdiction is not directed at regulation of labor relations as such. The state concern is with injury to reputation and the discouragement of violent reprisals.[16] The fact that a labor dispute is involved in this case is really a fortuitous circumstance.[17] In our view, these factors are quite significant.

(Continued from preceding page)

"The Board has long made it clear that it will not 'police or censor propaganda used in the elections it conducts, but rather leaves to the good sense of the voters the appraisal of such matters, and to opposing parties the task of correcting inaccurate and untruthful statements.' Nevertheless, elections have been set aside 'because of material misrepresentations of fact where (1) the employees would tend to give particular weight to the misrepresentation because it came from a party that had special knowledge of, or was in an authoritative position to know, the true facts and (2) no other party had sufficient opportunity to correct the misrepresentation before the election.' " (Footnote omitted.) Bok, "The Regulation of Campaign Tactics in Representation Elections Under The National La bor Relations Act," 70 Harv. L. Rev. 38, 82 (1964).

[15] This accounts for the Board's policies set out by Bok, note 14 *supra*.

[16] It is in this respect that we believe that reliance which the court of appeals in *Linn v. United Plant Guard Workers*, *supra*, note 9, placed on *Local 100, United Ass'n of Journeymen v. Borden*, 373 U.S. 690, 83 S.Ct. 1423 (1963), and *Local 207, Int'l Ass'n of Bridge Workers v. Perko*, 373 U.S. 701, 83 S.Ct. 1429 (1963), is inapposite. In both these cases the state was attempting to protect a worker's interest in his job. This is obviously a matter of labor relations and is to be governed exclusively by federal law. In libel actions, however, the state is affording protection of a citizen's interest in his reputation. The fact that the reputation was injured in a labor dispute is merely incidental. In vindicating this compelling interest—an interest close to its police power—the state is not responding to considerations of labor policy at all.

[17] Cf. *DeVeau v. Baisted*, 363 U.S. 144, 80 S.Ct. 1146 (1960) (upholding state attempt to regulate crime on the waterfront even though choice of labor representatives affected).

The right of an individual to be protected against injury inflicted by false and damaging statements is so fundamentally within the traditional province of state concern and responsibility that extended emphasis and discussion appear unnecessary. Surely, state administration of justice should not be denied on the basis of an inference or an assumption. Less than convincing congressional direction is insufficient to deprive the state of its important jurisdiction to offer a peaceful forum for redress.

We are unable to find any congressional action or intention, express or implied, which limits the power of the state to make effective its long expressed public policy of according litigants a peaceful forum for protection against libel. Especially is this true where, as here, the allegation is made that the libel was deliberate, malicious and made with actual intent to harm.

It is also intriguing to note the consequences of the rule for which the defendants contend. Since the NLRB can offer no satisfactory redress to the individual for the harm caused in a labor controversy, participants in a labor dispute have, in effect, personal immunity from action for libel. Our federal constitution insures freedom of speech, yet it has always been held that freedom of speech is circumscribed by limits. Libel has traditionally been one of these limits. The furthest immunity from suits or prosecution for libel thus far granted is in regard to criticism made of governmental, public officials. See *New York Times v. Sullivan,* 376 U.S. 254, 84 S. Ct. 710 (1964); *Garrison v. Louisiana,* ... U.S. ..., 85 S. Ct. 209 (1964). And even this rule does not apply where the defamation is made with actual malice. *Ibid.* Since actual malice is alleged in the instant case, the holding which defendants seek

would put them beyond even the pale of the *Times* ruling. We are not willing to grant to participants in labor disputes such absolute privileges on the basis of mere implication without any clear congressional indication—privileges which far outdistance a constitutional guarantee so jealously guarded and extended to its admissible social limit.

We recognize, of course, the guiding principle behind the doctrine of federal preemption: that where state and federal remedies may conflict and cause friction, the state jurisdiction must yield in the absence of a compelling state interest. A delicate balance exists between insuring effectuation of the federal policy embodied in congressional labor law and protecting permitted vital state interests. This is, of course, true where free speech in a labor dispute is involved. There is always some danger that criticism may be stifled if the balance is not precisely drawn, yet this is always true in placing defamation limitations on free speech. Abuses can be protected by the exercise of judicial authority. *Beauharnais v. Illinois, supra,* at 263-64, 72 S. Ct. at 734; *Salzhandler v. Caputo,* 316 F. 2d 445, 450 (2d Cir.), *cert. denied,* 375 U. S. 946, 84 S. Ct. 344 (1963).

Believing that a valid state interest which does not transgress federal policy exists in this defamation action, we conclude that state jurisdiction has not been withdrawn.

II

The trial court correctly dismissed defendants' preliminary objection which attacked plaintiffs' alleged failure to exhaust internal union remedies before seeking judicial relief. The court below held that plaintiffs' action for

defamation is subject to, and controllable by, the courts rather than the constitution or by-laws of the union. *Falsetti v. Local 2026, UMW,* 400 Pa. 145, 161 A. 2d 882 (1960), recognized that exceptions exist with respect to the rule regarding exhaustion of remedies and also recognized a relationship between that rule and the Labor Management Reporting and Disclosure Act of 1959. [18]

In *Salzhandler v. Caputo,* 316 F. 2d 445 (2d Cir.), *cert. denied,* 375 U.S. 946, 84 S. Ct. 344 (1963), the Labor Management Reporting and Disclosure Act of 1959 which protects freedom of expression for union members[19] was construed to prohibit union discipline with respect to a member who allegedly had made libelous statements about a union officer.[20] The union argued in support of its disciplinary sanctions, that "just as constitutionally protected speech does not include libelous utterances, *Beauharnais v. Illinois,* * * * [*supra*], the speech protected by the statute likewise does not include libel and slander." 316 F. 2d at 449. The court of appeals, however, distinguished *Beauharnais,* stating that the Supreme Court of the United States in that case had sustained the punishment of libel by courts and not by unions,[21] and held that although

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[18] Act of September 14, 1959, 73 Stat. 519, §1 *et seq.*, 29 U.S.C.A. §401 *et seq.* (Supp. 1963).

[19] "Freedom of Speech and Assembly. Every member of any labor organization shall have the right to meet and assemble, freely with other members; and to express any views, arguments, or opinions * * *." Act of September 14, 1959, 73 Stat. 522, tit. I, §101(a)(2), 29 U.S.C.A. §411(a)(2) (Supp. 1963).

[20] "The Congress has decided that it is in the public interest that unions be democratically governed and toward that end that discussion should be free and untramleled and that reprisals within the union for the expression of views should be prohibited." *Salzhandler v. Caputo,* 316 F.2d 445, 451 (2d Cir.), *cert. denied,* 375 U.S. 946, 84 S.Ct. 344 (1963).

"libelous statements may be made the basis of civil suit between those concerned, the union may not subject a member to any disciplinary action on a finding by its governing board that such statements are libelous."[22] 316 F. 2d at 451. Among the exceptions noted in *Falsetti* is that a person will not be required to take intra-association appeals which cannot, in fact, yield remedies.[23] This exception is clearly applicable in the present case. This record is entirely free from even the slightest suggestion that any remedy—theoretical, taken, illusory or otherwise—is in

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[21] In explaining the difference between court action and union action, the court of appeals said:

> "In *Beauharnais*, the Supreme Court recognized the possibility that state action might stifle criticism under the guise of punishing libel. However, because it felt that abuses could be prevented by the exercise of judicial authority, * * * the court sustained a state criminal libel statute. But the union is not a political unit to whose disinterested tribunals an alleged defamer can look for an impartial review of his 'crime'. It is an economic action group, the success of which depends in large measure on a unity of purpose and sense of solidarity among its members.
>
> "The [union] Trial Board in the instant case consisted of union officials, not judges. It was a group to which the delicate problems of truth or falsehood, privelege, and 'fair comment' were not familiar. Its procedure is peculiarly unsuited for drawing the fine line between criticism and defamation * * *." (Footnote omitted.) 316 F.2d at 449-50.

[22] "In reaching such a result the court could have further supported its reasoning by analogy to those obscenity cases in which a statute is struck down, not because the substantive standards are unconstitutional, but because initial administration of the standards is entrusted to a lay tribunal with insufficient concern for first amendments rights." (Footnote omitted.) 77 Harv. L. Rev. 770, 771 (1964).

[23] A similar conclusion was also reached, but for different reasons, in *Preveden v. Croatian Fraternal Union*, 120 F. Supp. 33 (W.D. Pa. 1954). The court there held that a member was not required to exhaust remedies provided by a fraternal union prior to bringing action for defamation.

any manner available or provided by any internal union procedure.

Order affirmed.

Mr. Justice Musmanno dissents.

Mr. Justice Cohen files a dissenting opinion.

DISSENTING OPINION

(Filed January 5, 1965)

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

~~Nos. 269, 272 January Term, 1964~~

CHARLES MEYER, et al. v. JOINT COUNCIL 53, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, et al., *Appellants.*	Appeals from the Order of the Court of Common Pleas No. 5 (Heard in C.P. No. 6) of the County of Philadelphia, as of June Term, 1963.

COHEN, J.

In view of the lack of authority for the proposition that the state's interest in defamation is as great as the state's interest in physical violence, I prefer to follow the well reasoned federal and state authorities to the effect that state-based actions for defamation arising out of a labor dispute are precluded, because regulation of the conduct in question is subject to the exclusive primary jurisdiction of the National Labor Relations Board over unfair labor practices and representation elections. *Linn v. United Plant Guard Workers,* 337 F. 2d 68 (6th Cir. 1964); *Blum v. In't Ass'n of Machinists,* 42 N.J. 389, 201 A. 2d 46 (1964); *Hill v. Moe,* 367 P. 2d 739 (Sup. Ct. Alaska (1961); cert. den., 370 U.S. 916 (1962); *Warehouse & Produce*

Workers Local 559, IBT v. United States Gypsum Co., 50 CCH Lab. Cas. 19,196 (Super. Ct. Wash. 1963); *Schnell Tool & Die Corp. v. United Steelworkers*, 200 N.E. 2d 727 (Ohio C.P. 1964). These cases are clearly within the spirit of the recent United States Supreme Court pronouncements on preemption of state tort actions arising out of labor disputes. See *Iron Workers Union v. Perko*, 373 U.S. 701 (1963) and *Local 100, United Association of Journeymen v. Borden*, 373 U. S. 690 (1963).

While the reputation and character of employees and employers may not be the primary concern of the NLRB in defining the area of permissible speech in labor disputes, it is patent that the development of fifty state laws of defamation cannot adequately deal with the needs of free flow of communication in such disputes. The Commonwealth's interest in defamation in the course of labor disputes is not great enough to warrant submersion of the vital need for uniformity of federal regulation of labor relations. This is not merely a case of the Commonwealth's interest colliding with that of the federal government, for it is the Commonwealth, like all states, that reaps the benefit of sound labor relations.

Accordingly, I dissent.